



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

Suite 15300
1800 Century Boulevard
Atlanta, Georgia 30345
(404) 417-2100

NOTICE

RE: (I) Repeal of current Rule 560-12-2-.34 "Employees' Meals." and adoption of new Rule 560-12-2-.34 "Employees' Meals or Beverages."

(II) Repeal of current Rule 560-12-2-.63 "Machinery, Replacement Manufacturing, Amended."

(III) Repeal of current Rule 560-12-2-.100 "Orphans' Homes Operated as Nonprofit Organizations" and adoption of new Rule 560-12-2-.100 "Child-caring Institution, Child-placing Agency, or Maternity Home."

(IV) Adoption of new Rule 560-12-3-.22 "Application for Certificate of Exemption for a Child-caring Institution, Child-placing Agency, or Maternity Home."

(V) Amendment of current Rule 560-12-2-.106 "United States Government Defense Contractors."

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-12-2 of the Rules and Regulations of the State of Georgia by repealing Rule 560-12-2-.34, entitled "Employees' Meals." and adopting in its place new Rule 560-12-2-.34, entitled "Employees' Meals or Beverages."

The Department also proposes to amend Chapter 560-12-2 by repealing Rule 560-12-2-.63, entitled "Machinery, Replacement Manufacturing, Amended." There shall be no rule adopted in its place at this time.

The Department also proposes to amend Chapter 560-12-2 by repealing Rule 560-12-2-.100, entitled "Orphans' Homes Operated as Nonprofit Organizations" and adopting in its place new Rule 560-12-2-.100, entitled "Child-caring Institution, Child-placing Agency, or Maternity Home."

The Department also proposes to amend Chapter 560-12-3 by adopting new Rule 560-12-3-.22, entitled "Application for Certificate of Exemption for a Child-caring Institution, Child-placing Agency, or Maternity Home."

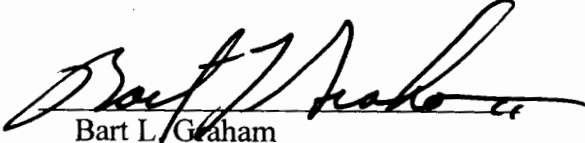
The Department also proposes to amend Chapter 560-12-2 by amending Rule 560-12-2-.106, entitled "United States Government Defense Contractors."

Attached with this notice are exact copies and synopses of the proposed rules. The proposed rules are being adopted and/or repealed under the authority of O.C.G.A. §§ 48-2-12 and 48-8-3(34).

The Department of Revenue shall consider the adoption and/or repeal of the above referenced proposed Rules at 10:00 a.m. on July 6, 2006 in Suite 15300 of the Department's headquarters at 1800 Century Blvd. NE, Atlanta, GA 30345-3205.

The Department must receive all comments regarding the above referenced proposed Rules from interested persons no later than 10:00 a.m. on July 6, 2006. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-6651. **Please reference "Notice Number SUT-2006-2" on all comments and include the specific Rule number(s) for which the comments apply.**

Dated: June 2, 2006


Bart L. Graham
Commissioner, Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION

CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS

560-12-2-.100 Child-caring Institution, Child-placing Agency, or Maternity Home.

The purpose of Proposed Rule 560-12-2-.100 is to provide guidance regarding the administration of O.C.G.A. § 48-8-3(41), which provides for an exemption from state and local Georgia sales and use tax with respect to certain sales to or by certain nonprofit tax-exempt organizations engaged primarily in providing child services.

Paragraph (1) of the Rule explains the Rule's purpose.

Paragraph (2) of the Rule provides for definitions of the terms "child services provider," "cost of operations," "exemption determination letter," and "nonprofit tax-exempt organization."

Paragraph (3) of the Rule provides the criteria a child services provider must satisfy to be eligible for the exemption.

Paragraph (4) of the Rule explains the annual renewal process.

Paragraph (5) of the Rule provides a general list of items that an eligible child service provider may or may not purchase tax-exempt using the exemption determination letter.

Paragraph (6) of the Rule provides criteria that an eligible child service provider must follow to sell tangible personal property or services tax-exempt.

Paragraph (7) of the Rule explains record keeping requirements.

Paragraph (8) of the Rule provides for the Rule's effective date.

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

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560-12-2-.100 Child-caring Institution, Child-placing Agency, or Maternity Home.

560-12-2-.100 Child-caring Institution, Child-placing Agency, or Maternity Home. ~~Orphans' Homes Operated as Nonprofit Organizations.~~ The exemption under the Act for sales of tangible personal property and services to orphans' homes located in this State and operated as nonprofit corporations will be administered in accordance with the following provisions:

~~(a) Definitions.~~

~~1. For purposes of the exemption "orphans" means minor children who are deprived of one or both natural parents or who are otherwise separated from one or both of such parents due to death, abandonment or nonsupport, except the term shall not include children cared for in a foster home or by foster parents.~~

~~2. For purposes of the exemption "orphans" homes" means orphanages or places of residence or refuge in Georgia for orphans, except that the term shall not include foster homes. The term "places" as used herein means buildings, homes, residences, institutions or other facilities located in Georgia. The term "orphans' homes" shall include only those orphanages and places of residence or refuge in Georgia for orphans which are regularly engaged in furnishing to orphans, as defined herein, food, clothing, care, protection and supervision, and at which the majority of~~

~~persons cared for are orphans within the meaning of this regulation.~~

~~3. For purposes of the exemption "operated as nonprofit corporations" means and includes only those corporations duly incorporated in Georgia or property registered with the Secretary of State and qualified to do business in Georgia and which hold certificates from the Internal Revenue Service or Georgia Department of Revenue, Income Tax Division, verifying that they are nonprofit organizations exempt from income tax and to which contributions are deductible for income tax purposes.~~

~~(b) Certificate of Exemption.~~

~~1. Any qualifying corporation desiring to avail itself of the exemption for orphans' homes shall obtain a Certificate of Exemption for each such orphans' home.~~

~~2. An application for Certificate of Exemption for an orphans' home shall be made by letter and must furnish the following information:~~

~~(i) the name and address of the corporation;~~

~~(ii) the name and address of the orphans' home;~~

~~(iii) the date the corporate charter or articles of incorporation was issued or approved and copy of same;~~

~~(iv) a certificate from the Internal Revenue Service or the Georgia Department of Revenue, Income Tax Division, verifying that the corporation, and, where appropriate, the orphans' home operated by the corporation, is a nonprofit organization exempt from income tax and to which contributions are deductible for income tax purposes;~~

~~(v) the name and address of the lessor of the premises if the property upon which the orphans' home is located is not owned by the corporation owning and operating the orphans' home;~~

~~(vi) certification that the orphans' home is managed, staffed and operated solely by employees on the payroll of the nonprofit corporation applying for exemption.~~

~~(c) Letter of Authorization.~~

~~1. Upon approval of an application for Certificate of Exemption, the Sales and Use Tax Division will furnish the orphans' home with a "Letter of Authorization." The orphans' home must furnish one photographic copy of the letter to each vendor of tangible personal property or services in order to relieve the seller from collecting the tax.~~

~~2. The letter of Authorization must not be furnished to suppliers of tangible personal property purchased by orphans' home for resale, and orphans' homes are required to collect and remit sales tax on sales of tangible personal property and taxable services made by the orphans' home.~~

~~3. Misuse of the Letter of Authorization shall be sufficient ground for its cancellation and for denial of the exemption.~~

(1) **Purpose.** The purpose of this Rule is to provide guidance regarding the administration of O.C.G.A. § 48-8-3(41), which provides for an exemption from Georgia sales and use tax with respect to certain sales to or by certain nonprofit tax-exempt organizations engaged primarily in providing child services.

(2) **Definitions.**

(a) "Child services provider" means a child-caring institution as defined under O.C.G.A. § 49-5-3(1), as amended, a child-placing agency as defined under O.C.G.A. § 49-5-3(2), as amended, or a

maternity home as defined under O.C.G.A. § 49-5-3(14), as amended.

(b) “Cost of operations” means all reasonable direct operational costs incurred by a child services provider. Costs shall be determined based on the child services provider’s method of accounting. Such costs include, but are not limited to: salaries; supplies; rent; mortgage payments; furniture and fixtures; loan payments; food; transportation; and educational and special activities.

(c) “Exemption determination letter” means a letter issued by the Commissioner permitting a child services provider to purchase certain tangible personal property and services exempt from Georgia sales and use tax.

(d) “Nonprofit tax-exempt organization” means any organization that holds a letter of determination from the Internal Revenue Service demonstrating that it qualifies as a nonprofit tax-exempt organization under Internal Revenue Code § 501(c)(3).

(3) Exemption from sales and use tax. Sales of tangible personal property and services to a child services provider are exempt from Georgia sales and use tax only when the child services provider obtains an exemption determination letter from the Commissioner, is a nonprofit tax-exempt organization, and engages primarily in providing child services.

(a) A child services provider is engaged primarily in providing child services if:

1. The child services provider is currently licensed by the Georgia Department of Human Resources as a child services provider as defined under subparagraph (2)(a) of this rule; and

2. More than fifty percent (50%) of the child services provider’s cost of operations for the previous fiscal year is directly related to

providing the services and activities as defined in O.C.G.A. § 49-5-3, as amended.

(i) If a child services provider has been in business for less than twelve full months, the provider's budgeted cost of operations will be used to determine its eligibility for the exemption on a temporary basis.

(ii) A child services provider submitting an application using its budgeted cost of operations must submit the actual cost of operations within thirty days following the end of its initial twelve-month period.

(iii) Any cost of operations that is not readily identifiable as being directly attributable to providing child services shall be excluded from the numerator when calculating the percentage.

(b) Exemption determination letter. To obtain an exemption determination letter from the Commissioner, a child services provider must submit a completed Revenue Form ST-CH-1, *Application for Certificate of Exemption for a Child-caring Institution, Child-placing Agency, or Maternity Home*, and include any additional documentation required by the Commissioner. Revenue Form ST-CH-1 may be downloaded from the forms section of the Department of Revenue's website.

1. Upon the Commissioner's approval of the child services provider's application, the Commissioner will issue an exemption determination letter to the child services provider that will be valid for the duration of the child services provider's annual license as provided by the Georgia Department of Human Resources or until revoked in writing by the Commissioner, whichever occurs first.

2. A copy of the exemption determination letter issued to a qualifying child services provider must be furnished to dealers selling tangible personal property or taxable services in order to excuse the dealers from collecting Georgia sales and use tax.

3. A copy of the exemption determination letter may be accepted by a dealer only when payment is made by check or credit card bearing the name of the qualifying child services provider. Any sales to child services provider employees or other persons for which payment is made with cash, personal check, or credit card on behalf of a child services provider remain subject to sales and use tax even though the purchaser will be reimbursed by the child services provider.

4. An exemption determination letter is issued for the exclusive use of the qualifying child services provider, and is not transferable. Use of the exemption determination letter by any person or entity other than the child services provider to whom it was issued is not permitted.

5. Any child services provider whose license is suspended or revoked by the Georgia Department of Human Resources, or who terminates business operations, must immediately return its exemption determination letter to the Commissioner.

6. If a child services provider's application is denied or a previously issued exemption determination letter is revoked, the Commissioner shall issue a written response providing the reason(s) for the denial or revocation. Reasons for denial of an application or revocation of a previously issued exemption determination letter include, but are not limited to, an insufficient or incomplete application, failure to submit all necessary documentation, misuse or noncompliance with any federal, state or local laws, or failure to satisfy any requirements as stated under the pertinent statute or this Rule.

7. The denial of an application or revocation of a previously issued exemption determination letter is final unless, within sixty (60) days of the mailing of the denial or revocation, the child services provider submits a written application for reconsideration to the Commissioner. The application must contain the child

services provider's reason(s) for reconsideration. The child services provider has the burden of proof to establish that the denial or revocation decision was not correct.

(4) **Annual Renewal Process.** Any child services provider who was previously issued an exemption determination letter and who desires to continue to receive the benefits of exemption beyond the duration of the initial period described in subparagraph (3)(b)1. must provide the Commissioner with a copy of the annual inspection report that renews the license issued by the Georgia Department of Human Resources within thirty (30) days of the issuance of the annual inspection report.

(5) **Purchases by child services providers.**

(a) Purchases eligible for the exemption include office equipment and supplies; medical, educational, personal care and janitorial supplies; food, clothing, motor vehicles used exclusively to transport children; and other such items necessary to provide care for children or mothers when purchased directly by a qualifying child services provider.

(b) Purchases that are not eligible for the exemption include, but are not limited to: motor vehicles for personal and business use; gifts to any person other than children or mothers under the care of a qualifying child services provider; building materials used by contractors; and purchases made by other persons performing services for a child services provider.

(6) **Sales by child services providers.**

(a) A sale of tangible personal property or services by a qualifying child services provider is exempt from Georgia sales and use tax if the transaction satisfies the following conditions:

1. The sale constitutes a fund-raising activity on behalf of the child services provider;

2. The fund-raising activities do not exceed thirty (30) days in any calendar year;

3. No sale proceeds are used for the benefit of anyone other than the child services provider; and

4. The sale proceeds are used solely for child services.

(b) The following examples illustrate the taxation of sales by qualifying child services providers:

1. A child services provider's retail sales derived from the operation of a booth selling food at a fair for two weeks are not subject to Georgia sales tax if all of the conditions in subparagraph (6)(a) of this Rule are satisfied.

2. A child services provider's retail sales for admission derived from a charity fund-raising event are not subject to Georgia sales tax if the provider satisfies all of the conditions in subparagraph (6)(a) of this Rule.

3. A child services provider's retail sales derived from the operation of a store every weekend throughout the year are subject to Georgia sales tax.

4. Sales made by a third party for which a child services provider receives a commission are subject to Georgia sales tax.

(c) Purchases made for resale that are paid directly by a child services provider are exempt from sales tax when an exemption determination letter is provided to the dealer. If a dealer donates tangible personal property purchased for resale to a child services provider, the dealer will be responsible for payment of Georgia sales tax as provided under O.C.G.A. § 48-8-39.

(7) **Records.** A child services provider is required to maintain records of all purchases and sales for a three-year period.

(8) **Effective Date.** This rule is effective beginning July 1, 2004.

Authority O.C.G.A. § 48-2-12.

PROPOSED